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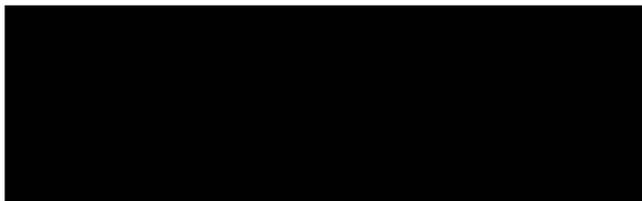
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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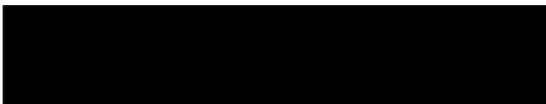


FILE: [REDACTED]
SRC 07 232 51722

Office: TEXAS SERVICE CENTER

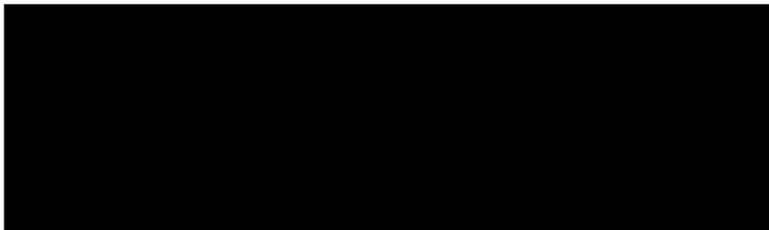
Date: **AUG 26 2009**

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as an other worker. The director determined that the petitioner failed to submit the requisite supporting documentation regarding the petitioner's ability to pay the beneficiary the proffered salary and regarding the beneficiary's qualifications.

On appeal, counsel provided a letter from the petitioning company's owner stating that she currently employs 160 employees and that her business has the ability to pay the beneficiary the proffered wage. Counsel also provided a copy of the beneficiary's high school transcript.

Title 8, C.F.R., Section 103.2(b)(1) addresses required evidence for the processing of any form with USCIS:

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

Title 8, C.F.R., Section 204.5(g)(2) identifies the initial evidence that is required for employment-based immigrant classifications that require an offer of employment:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

Title 8, C.F.R., Section 204.5(l)(3)(ii)(D) regarding other workers states:

If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.



The AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents at the time it submitted the Form I-140 petition. Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.